



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0276]

RIN 1625-AA08

Special Local Regulations for Marine Events; Potomac River,  
National Harbor Access Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish special local regulations during the "Swim Across the Potomac River" swimming competition, to be held on the waters of the Potomac River on July 8, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Potomac River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Coast Guard anticipates that this proposed rule will be effective and enforced on July 8, 2012.

ADDRESSES: You may submit comments identified by docket

number USCG-2012-0276 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

## Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the

individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before the end of the comment period, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Basis and Purpose

On July 8, 2012, the National Harbor Marina of Oxon Hill, Maryland, will sponsor a swimming competition across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. The event consists of up to 250 swimmers on a 1.3-mile linear course located downriver from the Woodrow Wilson Memorial (I-495/I-95) Bridge. The swimmers will be supported by sponsor-provided watercraft. The start will be located at North Point in Jones Point Park and the finish will be located along the shore at National Harbor Marina. Portions of the swim course will cross the Potomac River federal navigation channel and the National Harbor Access

Channel. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Potomac River. The regulations will be in effect from 7 a.m. to 11 a.m. on July 8, 2012. The regulated area, approximately 1,900 yards in length and 350 yards in width, extends across the entire width of the Potomac River between the Virginia and Maryland shorelines and includes all waters of the Potomac River, within lines connecting the following positions: from latitude 38°47'35" N, longitude 077°02'22" W, thence to latitude 38°47'12" N, longitude 077°00'57" W, and from latitude 38°47'24" N, longitude 077°03'03" W to latitude 38°46'54" N, longitude 077°01'09" W. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit the Potomac River through the regulated area, including the National Harbor Access Channel, will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and

transiting vessels.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

#### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting portions of the Potomac River and National Harbor Access Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and

marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit safely through a portion of the regulated area, but only after the last participant has cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe to do so.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of the Potomac River, including and National Harbor



Access Channel, during the event.

Although this regulation prevents traffic from transiting portions of the Potomac River and the National Harbor Access Channel during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic may be permitted to safely transit a portion of the regulated area, but only after all participants have safely cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe for vessel traffic to do so. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

#### Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity,

and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35T05-0276 to read as follows:

§ 100.35T05-0276 Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD.

(a) Regulated area. The following location is a regulated area: All waters of the Potomac River, within lines connecting the following positions: from 38°47'35" N, longitude 077°02'22" W, thence to latitude 38°47'12" N, longitude 077°00'57" W, and from latitude 38°47'24" N, longitude 077°03'03" W to latitude 38°46'54" N, longitude 077°01'09" W. All coordinates reference Datum NAD 1983.\

(b) Definitions: (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) Special local regulations: (1) The Coast Guard Patrol Commander may forbid and control the movement of all

vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 7 a.m. until 11 a.m. on July 8, 2012.

Dated: APR 04 2012

Mark P. O'Malley  
Captain, U.S. Coast Guard  
Captain of the Port Baltimore

[FR Doc. 2012-10252 Filed 04/26/2012 at 8:45 am; Publication  
Date: 04/27/2012]